

2019 No. 209

CANALS AND INLAND WATERWAYS

**The Waterways (Environmental Impact Assessment)
Regulations (Northern Ireland) 2019**

Made - - - - - *29th October 2019*

Coming into operation - *1st December 2019*

The Department for Infrastructure^(a), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(b).

The Department for Infrastructure is designated^(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the environment.

PART 1

INTRODUCTORY AND APPLICATION

Citation and commencement

1.—(1) These Regulations may be cited as The Waterways (Environmental Impact Assessment) Regulations (Northern Ireland) 2019 and come into operation on 1st December 2019.

Interpretation

2.—(1) In these Regulations—

“additional information” in any case where an environmental statement has been prepared in respect of proposed works means any information relating to the statement which is not contained in it;

“the Commission” means the Water Appeals Commission as described in Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006^(d);

“consultation bodies” shall be construed in accordance with regulation 8(2);

“the Department” means the Department for Infrastructure;

“the Directive” means Directive 2011/92/EU^(e) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the

(a) Formerly the Department for Regional Development; *see* section 1(6) and (11) of, and Schedule 1 to, the Departments Act (Northern Ireland) 2016 (2016 c. 5 (N.I.))

(b) 1972 c. 68; section 2(2) is amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (2006 c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (2008 c. 7)

(c) S.I. 2008/301

(d) S.I. 2006 No. 3336 (N.I. 21)

(e) O.J L 26, 28.1.2012, p. 1

environment as amended by Directive 2014/52/EU(a) of the European Parliament and of the Council;

“the Drainage Order” means the Drainage (Northern Ireland) Order 1973(b);

“the Water Order” means the Water (Northern Ireland) Order 1999(c);

“environmental statement” means a statement that includes such of the information referred to in Schedule 2, as is reasonably required to assess the environmental effects of any proposed works and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;

“general advertisement” means publication of a notice—

(a) in the Belfast Gazette; and

(b) on the website maintained by the Department;

“local advertisement” means a notice in one or more newspapers, circulating in the immediate locality of any proposed works;

“public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures of the Department. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

“waterway” has the same meaning assigned to it by the Water Order and any reference to a waterway includes a reference to the channel or bed of a waterway which is for the time being dry; and

“works” means—

(a) works carried out in relation to a marina under Part III of the Water Order; and

(b) any changes made to or extension of such works;

(2) In these Regulations, “canal scheme” has the same meaning assigned to it by Article 39(2) of the Water Order.

(3) In these Regulations, “the Drainage Council” has the same meaning assigned to it by Article 3(1) of the Drainage Order.

(4) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in the Republic of Ireland.

(5) Expressions used in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive, unless otherwise provided for.

(6) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Application

3.—(1) Subject to the following provisions, Part 2 shall apply in relation to any works other than works commenced before the coming into operation of these Regulations.

(2) The amendments made to the Water Order by these Regulations shall not have effect in relation to any canal scheme prepared before the coming into operation of these Regulations.

(a) O.J. L 124, 25.4.2014, p. 1

(b) S.I. 1973 No. 69 (N.I. 1)

(c) S.I. 1999/662 (N.I. 6)

(d) 1954 c.33 (N.I.)

Directions

4.—(1) The Department may direct that—

- (a) specific works are exempt from these Regulations if it considers that the application of these Regulations would have an adverse effect on the fulfilment of the works purpose, provided the objectives of the Directive are met; or
- (b) these Regulations do not apply in relation to particular proposed works if the sole purpose of the proposed works is to respond to a civil emergency and the Department considers the application of the Regulations would have an adverse effect on the fulfilment of that purpose.

(2) The Department shall only make a direction under paragraph (1)(a) in an exceptional case and where it does so shall—

- (a) make available to the public by general and local advertisement, the information considered in making the direction, the reasons for making the direction, briefly describe the proposed works and the effect of the direction;
- (b) consider whether, in that case, another form of assessment of the environmental effects of the proposed works would be appropriate; and
- (c) make available to the public any information obtained under that other form of assessment.

(3) No direction shall be made under paragraph (1)(a) or (b) where the Department or any other Northern Ireland Department is aware that the proposed works would be likely to have significant effects on the environment in the Republic of Ireland.

Coordination of assessments

5.—(1) In addition to the requirement for an assessment of the environmental effects to be carried out in accordance with these Regulations, if there is also a requirement to carry out a Habitats Regulation Assessment, the Department must, where appropriate, ensure that the Habitats Regulation Assessment and the assessment of the environmental effects are coordinated.

(2) In these Regulations, a “Habitats Regulation Assessment” means an assessment under regulation 43 of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995(a).

PART 2

MARINA WORKS

Restriction on proposed works

6.—(1) Subject to regulation 4, the Department shall not carry out any works unless—

- (a) it has complied with the requirements of these Regulations in relation to the works; and
- (b) where a proposal relating to those works has been referred to the Commission under regulation 15(8)—
 - (i) the Commission has consented to the carrying out of the works; and
 - (ii) the works are carried out in accordance with any conditions to which the consent is subject.

Consideration whether proposed works have significant effects on the environment

7.—(1) Where the Department proposes to carry out works it shall, taking into account the selection criteria in Schedule 1 and the available results of other environmental assessments that

(a) S.R. 1995 No. 380; regulation 43 was substituted by S.R. 2007 No. 345, regulation 14

may be required under other legislation applicable in Northern Ireland, determine whether the proposed works are likely to have significant effects on the environment.

(2) The Department must make the determination mentioned in paragraph (1) within 90 days of the date on which the proposal to carry out the works was made.

(3) The Department must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any function under these Regulations, between the persons bringing forward a proposal for works and the persons responsible for making the determination mentioned in paragraph (1).

Notification of determination that proposed works are not likely to have significant effects on the environment

8.—(1) Where, pursuant to regulation 7(1) the Department, having taken into account, so far as relevant, the criteria set out in Schedule 1 and the available results of other environmental assessments that may be required under other legislation applicable in Northern Ireland, determines that the proposed works are not likely to have significant effects on the environment, it shall, by general and local advertisement—

- (a) state that it proposes to carry out the works in question;
- (b) describe briefly the nature, size and location of the proposed works;
- (c) state that it does not propose to prepare an environmental statement in respect of the works, and the main reasons why with reference to the relevant criteria in Schedule 1;
- (d) state any features of the project and/or measures envisaged to avoid or prevent any significant adverse effects on the environment;
- (e) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed works at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette; and
- (f) describe what other information relating to the environmental effects of the proposed works is available and give details of where it can be obtained.

(2) Where the Department publishes a notice in accordance with paragraph (1) in relation to any proposed works it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to each of the consultation bodies, that is to say—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the proposed works are situated;
- (c) any other public authority, statutory body or organisation which exercises statutory functions, or is otherwise designated by any statutory provision as having responsibilities relating to the environment; and
- (d) any other person who appears to it to have an interest in the matter including, where appropriate, the Republic of Ireland.

(3) Where, within the period specified in paragraph (1)(e), no representations have been made to the effect that the proposed works are likely to have significant effects on the environment, the Department may proceed to carry out those works.

(4) Where, following the period specified in paragraph (1)(e), the Department considers (whether in the light of any representations or otherwise) that the proposed works are likely to have significant effects on the environment, it shall make a determination accordingly, within a period not exceeding 90 days.

(5) Where, within the period specified in paragraph (1)(e), any representations have been made to the effect that the proposed works are likely to have significant effects on the environment and, notwithstanding those representations, the Department considers that the proposed works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the proposed works are likely to have significant effects on the

environment and shall provide the Commission with all the relevant information and copies of all relevant documents in its possession.

(6) Where the Commission considers that the information and the copy documents provided in accordance with paragraph (5) do not provide sufficient information to enable it to make a determination for the purposes of that paragraph, it shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as the Department may be able to provide on the matters raised.

(7) Where an application is made to the Commission under paragraph (5) in relation to any proposed works, the Commission shall, taking into account the selection criteria in Schedule 1, and the available results of preliminary verifications and assessments of the effects on the environment carried out pursuant to other legislation applicable in Northern Ireland, determine within a reasonable time, whether the proposed works are likely to have significant effects on the environment and shall inform the Department, and any person who made representations under paragraph (1)(e) in relation to the proposed works, of its determination.

(8) Where an application is made to the Commission under paragraph (5) in relation to any proposed works, the Commission shall, prior to making a determination for the purposes of that paragraph, afford the Department and any person who made representation under paragraph (1)(e) in relation to the proposed works, the opportunity of appearing before and being heard by the Commission.

Notification of determination that proposed works are likely to have significant effects on the environment

9.—(1) This regulation applies to any case where—

- (a) under regulations 7(1) or 8(4), the Department determines that any proposed works are likely to have significant effects on the environment; or
- (b) under regulation 8(7), the Commission determines that any proposed works are likely to have significant effects on the environment.

(2) In any case to which this regulation applies, the Department shall by general and local advertisement—

- (a) describe briefly the nature, size and location of the proposed works in question;
- (b) state that the proposed works are likely to have significant effects on the environment, state the main reason for requiring an assessment with reference to the relevant criteria listed in Schedule 1, and that the Department intends to prepare an environmental statement in respect of them;
- (c) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the proposed works at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette;
- (d) indicate the nature of the information in question and the times where and means by which it will be made available;
- (e) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision; and
- (f) indicate whether the proposed works are likely to have significant effects on the environment in the Republic of Ireland.

(3) Where the Department publishes a notice in accordance with paragraph (2) in relation to any proposed works it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to each of the consultation bodies.

(4) The Department shall make available to the public concerned any additional information which is relevant to a case to which this regulation applies but which only becomes available after the publication of the advertisements under paragraph (2).

Preparation of an environmental statement

10.—(1) The Department shall prepare an environmental statement in any case to which regulation 9 applies.

(2) The environmental statement referred to in paragraph (1) must—

- (a) contain the information specified in Schedule 2;
- (b) be prepared by persons with sufficient expertise and competence in order to ensure the completeness and quality of the statement;
- (c) contain a statement by the Department setting out how the requirement of sub-paragraph (b) has been complied with;
- (d) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and
- (e) where an opinion is issued in accordance with regulation 11, be based on that opinion.

(3) The Department shall carry out consultation as referred to in regulation 12 and, where relevant, regulation 15.

Request about the information to be included in an environmental statement

11.—(1) The Department may request the Commission to give an opinion as to the information to be contained in any environmental statement.

(2) Where the Department requests an opinion under paragraph (1) before a determination has been made under regulation 7(1), 8(4) or (7), the Commission shall deal with the request on the assumption that the works will have significant effects on the environment.

(3) Before giving an opinion under paragraph (1) in relation to any proposed works the Commission shall consult the Department and each of the consultation bodies.

(4) Giving an opinion under this regulation shall not preclude the Commission from requesting further information from the Department under regulation 15(9).

Publicity for an environmental statement

12.—(1) Where the Department has prepared an environmental statement in relation to any proposed works, it shall by general and local advertisement give notice in accordance with paragraphs (2) and (3).

(2) The advertisement shall state—

- (a) that the environmental statement has been prepared and give details of the places where and times at which copies, together with details of the proposed works to which the environmental statement relates, may be inspected;
- (b) that any person wishing to make representations in relation to the likely environmental effects of the proposed works to which the statement relates shall make them in writing to the Department at the address specified in the advertisement within 30 days of the publication of the notice in the Belfast Gazette; and
- (c) that, where no objection in relation to the likely environmental effects of the proposed works is made, and the Department, having undertaken the examination specified in regulation 15(1), considers that the works should be approved, it may so determine.

(3) On or before the date of the publication in the Belfast Gazette of the notice under paragraph (1) the Department shall—

- (a) send a copy of the environmental statement and notice to each of the consultation bodies so that any such body has an opportunity to make representations on the likely environmental effects of the proposed works to which the statement relates before the expiry of the period specified in the notice;
- (b) make available for inspection at an office of the Department or some other convenient place for a period of at least 30 days following the date of the publication of the notice in

the Belfast Gazette, the details of the proposed works and the environmental statement relating to the proposed works, including any information obtained under regulation 13(1) or 13(3) which is relevant to the preparation of the environmental statement;

- (c) ensure that a reasonable number of copies of the statement are made available; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(4) Where, in accordance with paragraph (3)(a), the Department sends any body a copy of the environmental statement it shall consult that body about the assessment and the likely environmental effects of the proposed works to which it relates.

Assistance in the preparation of environmental statements

13.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of regulation 10 it may consult with any person to determine whether that person has in his possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, he shall make that information available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed works, and complied with the requirements of regulation 12(3), the Department or, as the case may be, the Commission acting in accordance with regulation 15(9), may determine that further information is required.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his possession any additional information and if that person has any such information, he shall make that information available to the Department.

(4) Where, pursuant to paragraph (3), the Department obtains any additional information it shall by general and local advertisement—

- (a) state that the additional information is available, and give details of the places where and times at which a copy of the additional information may be inspected or obtained; and
- (b) state that any person who wishes to make representations in relation to the additional information should make representations in writing to the Department at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette.

(5) At the same time as the notice in the Belfast Gazette is published under paragraph (4) the Department shall—

- (a) send copies of the additional information to each consultation body; and
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 days following the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed works in question and the environmental statement relating to the works, and ensure that a reasonable number of copies of the information are made available.

(6) Nothing in paragraph (1) or (3) shall require the disclosure by any person of information which is capable of being treated as confidential under regulation 12(1) of the Environmental Information Regulations 2004(a) or must be so treated under regulation 13(1) of those Regulations.

(a) S.I. 2004 No. 3391; regulation 13(1) was substituted by paragraph 307(2) of Schedule 19 to the Data Protection Act 2018 (c. 12)

Proposed works likely to have significant effect on the environment in the Republic of Ireland

14.—(1) Where it appears to the Department that any proposed works are likely to have a significant effect on the environment in the Republic of Ireland or where the Republic of Ireland is likely to be significantly effected and so requests, the Department shall—

- (a) send to the Republic of Ireland, as soon as possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 9(2)—
 - (i) a copy of the notice; and
 - (ii) any available information on the possible significant effects of the proposed works on the environment in the Republic of Ireland;
- (b) make available to the Republic of Ireland any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication; and
- (c) inform the Republic of Ireland in writing that if it wishes to be consulted further in relation to the proposed works in accordance with paragraphs (2) to (4) it must inform the Department of the fact within a period determined in agreement with the Republic of Ireland but which shall not be less than 30 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, to it.

(2) Where the Republic of Ireland indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to the Republic of Ireland—

- (a) a copy of the proposal for the works;
- (b) a copy of the environmental statement in respect of the proposed works;
- (c) all the information required to be given to any person under regulation 9; and
- (d) relevant information regarding the procedure for consultation under this Part,

but only to the extent that such information has not been provided to the Republic of Ireland earlier in accordance with paragraph (1).

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time, to the authorities designated by the Republic of Ireland to be consulted or likely to be concerned by the proposed works by reason of their specific environmental responsibilities or local and regional competence and to the public in the territory of the Republic of Ireland where they are likely to be significantly affected; and
- (b) ensure that these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed works should proceed, to forward to the Department, within a reasonable time, their opinion on the information supplied.

(4) The Department shall—

- (a) consult with the Republic of Ireland regarding, inter alia, the potential significant effects of the proposed works on the environment in the Republic of Ireland and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the Republic of Ireland, a reasonable period of time for the duration of the consultation period which shall not be less than 30 days beginning with the day on which the Department forwarded the information to the Republic of Ireland in pursuance of paragraph (2).

(5) Where the Republic of Ireland has been consulted in relation to any proposed works in accordance with paragraph (4) the Department shall inform the Republic of Ireland of the determination in respect of the proposed works and shall forward to it a statement of—

- (a) the determination and conditions attached thereto;
- (b) the main reasons and considerations on which the determination is based; and

- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed works.

Determination of whether proposed works should be approved

15.—(1) On expiry of the period referred to in regulation 12(2)(b) the Department shall within a reasonable timeframe—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with regulation 12 and any relevant information received through the consultation under regulation 12 and 14, to assess the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 3;
- (b) reach a reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether the proposed works are to be approved or not to be approved.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be still valid at the time that the decision is taken as to whether approval for the proposed works is or is not to be granted.

(3) The Department must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

(4) Where—

- (a) the Department is satisfied that the reasoned conclusion, or any decisions made on the proposed works are still valid; and
- (b) no objection in relation to the likely environmental effects of the proposed works has been made; or
- (c) any such objection has been withdrawn,

and the Department, having undertaken the assessment required by paragraph (1), considers that the proposed works should proceed (unconditionally or subject to conditions) or should not proceed, it may so determine.

(5) Where the Department has determined—

- (a) in accordance with paragraph (4), that the proposed works should be approved or that the proposed works should be approved subject to conditions, or
- (b) that the proposed works should not be approved,

the Department shall publish a general and local advertisement, in accordance with paragraph (6).

(6) Each of the advertisements referred to in paragraph (5) shall—

- (a) inform the public of the determination; and
- (b) give details of the places where and the times at which the public may inspect a statement of—
 - (i) the reasoned conclusion of the Department on the significant effects of the proposed works on the environment, taking into account the results of the examination referred to in paragraph (1);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations;
 - (v) any monitoring measures considered appropriate by the Department; and

(vi) where the proposed works are not approved the main reason for refusal.

(7) At the same time as the notice in the Belfast Gazette is published under paragraph (5), the Department shall send a copy of the determination along with the details referred to in paragraph (6)(b)(i) to (vi) to each consultation body and any person who made representations under regulation 12 or 13, to the proposed works.

(8) Where the Department, having considered the examination specified in paragraph (1), considers that the proposed works should be approved but objections to these works made in relation to the likely environmental effects have not been withdrawn, it shall send the proposal for the works together with the environmental statement, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (9) to (12).

(9) Where the Commission considers that the proposal, environmental statement, additional information and representations sent to it in accordance with paragraph (8) do not provide sufficient information to enable a determination to be made in relation to any proposed works in pursuance of this regulation, the Commission shall notify the Department in writing, of the matters on which further information is required and may make a written request to the Department for such information within a specified timeframe.

(10) Where, in accordance with paragraph (9), the Commission requests further information in relation to any proposed works, the Department shall—

(a) by general and local advertisement state—

- (i) that the further information is available in relation to the proposed works and give details of the places where and the times at which a copy may be inspected; and
- (ii) that any person who wishes to make representations on the likely environmental effects of the proposed works to which the further information relates may make them in writing to the Commission at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette; and

(b) on or before the date of the publication of the notice in the Belfast Gazette, send a copy of the further information and notice to each of the consultation bodies so that they have an opportunity to make representations to the Commission on the likely environmental effects of the proposed works to which the further information relates before the expiry of the period specified in the notice.

(11) The Commission shall—

- (a) assess, in light of the environmental statement, any further information provided in response to a request under paragraph (9) and any representations referred to in regulation 12 or 14 or paragraph (10), the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 3;
- (b) afford the Department and any persons who made representations the opportunity of appearing before and being heard by the Commission;
- (c) having regard to the assessment under sub-paragraph (a) and the representations made under sub-paragraph (b) and having examined the concerns and opinions expressed by the public and the main reason and considerations upon which the determination under consideration was based, including information about the public participation process—
 - (i) consent to the proposed works in question unconditionally or subject to such conditions as the Commission considers appropriate; or
 - (ii) refuse to consent to the proposed works; and
- (d) send to the Department and any person who made representations under regulations 12 or 14 or paragraph (10) a statement in writing of—
 - (i) the reasoned conclusion of the Commission on the significant effects of the proposed works on the environment, taking account the results of the examination referred to in this paragraph;
 - (ii) any conditions to which the decision is subject which relates to the likely significant environmental effects of the proposed works on the environment;

- (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultation;
 - (v) any monitoring measures considered appropriate by the Commission; and
 - (vi) where consent for the proposed works is refused the main reason for refusal.
- (12) The Department shall by general and local advertisement—
- (a) inform the public of the Commission’s determination under paragraph (11)(c) within 30 days of receipt of such determination; and
 - (b) give details of the places where and the times at which the public may inspect a copy of the statement sent to it under paragraph (11)(d).

(13) In relation to any determination made by the Department or by the Commission under this regulation or regulation 8, the Department shall maintain a record of, and make available to the public on request, the information referred to in paragraph (11)(d).

Monitoring

16.—(1) Where an environmental statement is determined by the Department or, as the case may be, the Commission, and the decision is to approve the works, the Department, or the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed works (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring condition, the Department or, as the case may be, the Commission must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works and the significance of their effects on the environment having regard in particular to the types of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the Department or, as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.

Public participation

17.—(1) The Department shall, in relation to any proposed works, make available to the public—

- (a) at the time that the notice in the Belfast Gazette relating to those works is published under regulation 8(1), all information that is relevant to them;
- (b) any other information which is relevant to a determination under regulation 15 and which only becomes available after the time that the public was given notice in accordance with regulation 8(1)(f) whether as a result of a request from the Commission under regulation 8(6) or otherwise; and
- (c) any further information which is relevant to the assessment under regulation 15 and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under regulation 9(2).

PART 3

CANAL SCHEMES

Amendment of the Water (Northern Ireland) Order 1999

18.—(1) The Water Order^(a) is amended in accordance with paragraphs (2) and (3).

(2) In Article 45 (provisions of the Drainage Order applied for the purposes of this Part)^(b) for paragraphs (1), (1A) and (1A) substitute—

“(1) The provisions of the Drainage Order specified in Part I of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to canal schemes in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.

(1A) The provisions of the Drainage Order specified in Part II of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to works under this Part (including works undertaken in pursuance of a canal scheme) in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.”.

(3) For Schedule 5^(c) substitute the Schedule set out in Schedule 4 to these Regulations.

PART 4

CONSEQUENTIAL AMENDMENTS AND REVOCATION

Amendment of the Planning (General Permitted Development) Order (Northern Ireland) 2015

19.—(1) The Planning (General Permitted Development) Order (Northern Ireland) 2015^(d) is amended in accordance with paragraph (2).

(2) In the table in Part 25 (development by the Department of Culture, Arts and Leisure) of the Schedule, under Class B in column 3 for “the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006” substitute “the Waterways (Environmental Impact Assessment) Regulations (Northern Ireland) 2019”.

Revocation

20. The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 are revoked in so far as they are not already revoked^(e).

(a) S.I. 1999/662 (N.I. 6)
(b) Article 45(1) was last substituted by S.R. 2006 No. 34, regulation 22(2)
(c) Schedule 5 was last substituted by S.R. 2006 No. 34, regulation 22(3) and subsequently amended by paragraph 40(3) of Schedule 12 and paragraph 1 of Schedule 13 to S.I. 2006/3336 (N.I. 21)
(d) S.R. 2015 No. 70
(e) S.R. 2006 No. 34; regulations 4 to 15 were revoked so far as they related to drainage works and regulations 18 to 21 were revoked for all purposes by S.R. 2017 No. 88, regulation 25(1)

Sealed with the Official Seal of the Department for Infrastructure on 29th October 2019



Jackie Robinson

A senior officer of the Department for Infrastructure

SCHEDULES

SCHEDULE 1

Regulation 7(1)

Criteria to determine whether the works should be subject to an environmental statement

Characteristics of the works

1. The characteristics of the works must be considered having regard, in particular, to—
 - (a) the size and design of the whole works;
 - (b) their cumulative effects with other existing and/or approved works;
 - (c) the use of natural resources, in particular, land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents and/or disasters which are relevant to the works concerned, including those caused by climate change, in accordance with scientific knowledge, having regard, in particular, to substances or technologies used; and
 - (g) the risks to human health (for example due to water contamination or air pollution)

Location of the works

2. The environmental sensitivity of geographical areas likely to be affected by the works must be considered, having regard, in particular, to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) The absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under EEA States' legislation, Natura 2000 areas designated by EEA States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in any legislation applicable in Northern Ireland and relevant to the works, or in which it is considered that there is such a failure;
 - (vii) densely populated areas; and
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Types and characteristics of the potential impact

3. The likely significant effects on the environment must be considered in relation to the criteria set out under paragraphs 1 and 2 with regard to the impact of the works on the factors specified in Article 3.1 of the Directive, and having regard, in particular to—

- (a) the magnitude and spatial extent of the impact of the works (for example the geographical area and size of the population likely to be affected;
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved works;
and
- (h) the possibility of effectively reducing the impact.

Information for the environmental statement

1. A description of the works including in particular—

- (a) a description of the location of the works;
- (b) a description of the physical characteristics of the whole works, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the works (in particular any production processes), for instance, energy demand and energy used, nature and quantity of materials and natural resources (including water, land, soil, and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and sub-soil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of design, technology, location, size and scale) studies by the Department, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment and an outline of the likely evolution thereof without implementation of the works as far as natural changes from the current state can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in Article 3.1 of the Directive likely to be significantly affected by the proposed works; population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction and sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaption), material assets, cultural heritage including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the works on the environment resulting from, inter alia—

- (a) the construction and existence of the works, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved works, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the works to climate change; and
- (g) the technologies and substances used.

The description of the likely significant effects on the factors specified in Article 3.1 of the Directive should cover the direct effects and any indirect, secondary, cumulative, transboundary, short, medium and long-term, permanent and temporary, positive and negative effects of the

works. This description should take into account the environmental protection objectives established at EU or Member State level which are relevant to the works, including in particular those established under Council Directive 92/43/EEC^(a) and Directive 2009/147/EC^(b) of the European Parliament and of the Council.

6. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment including details of the difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-works analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the works on the environment deriving from the vulnerability of the works to risks of major accidents or disasters which are relevant to the works concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council^(c) or Council Directive 2009/71/Euratom^(d) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

^(a) O.J. L 206, 22.7.1992, p. 7

^(b) O.J. L 20, 26.1.2010, p. 7

^(c) O.J. L 197, 24.7.2012, p. 1

^(d) O.J. L 172, 2.7.2009, p 18

SCHEDULE 3

Regulation 15(1)

Environmental factors to be taken into account

1. The environmental statement shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effect of the works on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EEC;
- (c) land, soil, water, air, climate;
- (d) material assets, cultural heritage, and the landscape; and
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

2. The effects referred to in paragraph 1 on the factors set out in that paragraph shall include the expected effects deriving from the vulnerability of the works to risks of major accidents or disasters that are relevant to the works concerned.

SCHEDULE 4

Regulation 18(3)

“SCHEDULE 5

Article 45(1) and (1A)

Provisions of the Drainage Order applied for the purposes of environmental impact assessment of canal schemes

PART 1

Provisions of the Drainage Order applied by Article 45(1)

1. The provisions of the Drainage Order applied by Article 45(1) of this Order are as follows—

<i>Provision</i>	<i>Subject matter</i>
Part 1	Introductory
Article 12	Restrictions on drainage schemes
Article 12ZA	Direction that Articles do not apply
Article 12A	Consultations and determination of whether a drainage scheme has significant effects on the environment
Article 12B	Drainage schemes likely to have significant effects on the environment
Article 12C	Preparation of an environmental statement
Article 12D	Publicity for an environmental statement
Article 12E	Assistance in the preparation of an environmental statement
Article 12F	Charges
Article 12G	Drainage schemes likely to have significant effects on the environment in another EEA State
Article 12H	Determination of whether a drainage scheme should be approved
Article 12I	Monitoring
Article 13	Confirmation of drainage schemes

Article 13A	Public participation
Article 14	The carrying out of drainage schemes
Article 15	Provisions in regard to roads, bridges, culverts and embankments
Article 16	Amendment of drainage schemes
Schedule 2A	Information for inclusion in environmental statement
Schedule 2B	Selection criteria referred to in Article 4.3 of the Directive
Schedule 2C	Environmental factors to be taken into account

PART 2

Provisions of the Drainage Order applied by Article 45(1A)

2. The provisions of the Drainage Order applied by Article 45(1A) of this Order are as follows—

<i>Provision</i>	<i>Subject matter</i>
Part 1	Introductory
Article 17	Compensation for certain losses due to construction of drainage works
Article 18	Compensation for injury to canals, fisheries, etc.
Article 19	Matters to be regarded in assessing compensation
Article 20	Disposal of surplus lands, etc
Article 31	Noxious weeds
Article 35	Provisions as to recovery of expenses
Article 36	Miscellaneous offences
Article 38	Limitation of liability for flooding, etc.
Article 39	Protection for officers of the Department
Article 40	Protection of fisheries
Article 40A	Protection of water and sewage undertakers

PART 3

Modifications of the provisions applied by Parts 1 and 2

3. The provisions of the Drainage Order specified in Parts 1 and 2 of this Schedule shall, in their application for the purposes of Part III of this Order have effect with the following modifications—

- (a) references therein to a watercourse shall be construed as references to a waterway;
- (b) references therein to the Drainage Order shall be construed as references to Part III of this Order;
- (c) references therein to—
 - (i) a scheme or drainage scheme carried out under the Drainage Order, or any part thereof;
 - (ii) drainage works; and
 - (iii) drainage purposes or purposes connected with drainage,shall respectively be construed as references to—
 - (A) a canal scheme;
 - (B) works under any provision contained in Part III of this Order or any canal scheme; and
 - (C) the purposes of any such provision or scheme;
- (d) references therein to sea defences and sea defence works shall be omitted;
- (e) references to the Drainage Council shall be omitted;
- (f) in Article 17—
 - (i) for paragraph (4) substitute—

“(4) Every claim for compensation under this Article—

 - (a) shall be made in writing to the Department within 3 years from the date of completion of the works from which, or from the operation of which, the claim arises, and such details of the claim as the Department may require shall be furnished in writing to the Department within such a period as the Department may determine, and
 - (b) shall, in default of agreement, be heard and determined by the Lands Tribunal.”;
 - (ii) in paragraph (5), the words “and may allow a sum in respect of the cost of the employment of any” shall be omitted; and
- (g) in Article 38, after paragraph (2) add—

“(3) Every claim duly made for compensation under this Article shall, in default of agreement, be heard and determined by the Lands Tribunal.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, for Northern Ireland, Council Directive 2011/92/EU (“the Directive”) (as amended by Council Directive 2014/52/EU) on the assessment of the effects of certain public and private projects on the environment, in respect of canal schemes and certain marina works.

Council Directive 2011/92/EU consolidated Council Directives 85/337/EEC and subsequent amendments.

The Regulations revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (in so far as they were not already revoked by the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017) and re-enact, with amendment, those Regulations in relation to canal schemes and certain marina works.

The Regulations require the Department, in execution of certain works, to produce an environmental statement and, on the basis of that statement, to decide whether or not to proceed with the works in question.

Part 2 of the Regulations implements the Directive in relation to works carried out in relation to marinas under Part III of the Water (Northern Ireland) Order 1999 (“the Water Order”).

Part 3 of the Regulations implements the Directive in relation to canal schemes by way of amendment of the Water Order to apply the relevant Articles of the Drainage (Northern Ireland) Order 1973 (“the Drainage Order”) to such schemes.

Part 4 of the Regulations makes consequential amendments to the Planning (General Permitted Development) Order (Northern Ireland) 2015 and revokes the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006.

The principal requirements of the Regulations are as follows—

1. Regulation 4 provides that the Department may direct that specific works are exempt from the Regulations if it considers—

- (a) the application of the Regulations would have an adverse effect on the purpose of those works provided the objectives of the Directive are met; or
- (b) the proposed works have the response to a civil emergency as their sole purpose and the application of the Regulations would have an adverse effect on the fulfilment of that purpose.

If the Department makes a direction under paragraph (a) it shall inform the public and consider if another assessment would be appropriate.

No direction can be made where there are likely to be significant effects on the environment in the Republic of Ireland.

2. Regulation 5 provides for the need to coordinate assessments should any works require an environmental impact assessment under these Regulations and a Habitats Regulation Assessment.

3. Regulation 6 provides restrictions on carrying out works, including those extending outside Northern Ireland, unless the requirements of these Regulations have been complied with and, if appropriate, the Water Appeals Commission (“the Commission”) has consented to the works. The works must be carried out in accordance with any conditions to which the consent is subject.

4. Regulation 7 states that, where the Department proposes to carry out works, it shall take into account the selection criteria in Schedule 1 when deciding whether those works are likely to have significant effects on the environment and shall do so within 90 days of the date on which the proposal to carry out work was made. It requires the Department to perform its duties under the

Directive in an objective manner and not place itself in a situation that may give rise to a conflict of interest.

5. Regulation 8 provides the detail of how the public should be informed and consulted on decisions where the Department considers that the works are not likely to have any significant effects on the environment. Where following the consultation period of 30 days the Department considers that the works are likely to have significant effects on the environment it must make this determination within 90 days. If the Department receives representation that the works are likely to have significant impacts and it still considers that they are not, then the Department must apply to the Commission for a determination. The Commission may request further information and allow the Department, and any person making representations, the opportunity of being heard by the Commission before making its determination.

6. Regulation 9 provides the detail on how the public should be informed and consulted on decisions where the Department considers that the works are likely to have significant effects on the environment.

7. Regulation 10 states that the Department shall prepare an environmental statement where there are likely to be any significant effects on the environment and describes how the environmental statement should be prepared.

8. Regulation 11 deals with the circumstances where the Department requests an opinion from the Commission before a determination can be made and that the Commission will consult with the Department and the consultation bodies and, if necessary, request further information, before giving an opinion.

9. Regulation 12 details how the environmental statement must be advertised and details made available to the public, and that representations may be made.

10. Regulation 13 describes the process for obtaining further information to assist in the preparation of an environmental statement and the need to advertise publically any additional information obtained.

11. Regulation 14 sets out the process for proposed works which are likely to have significant effects on the environment in the Republic of Ireland. It details the information to be provided and the consultation to take place. It also requires that where the Republic of Ireland has been consulted the Department must inform them of the determination and issue a statement which includes any conditions attached, the main reasons and considerations on which the determination was made and, where necessary, any measures to avoid adverse effects.

12. Regulation 15 states that the Department shall examine the environmental statement and any other relevant information, reach a reasoned conclusion which must be currently valid at the time the approval decision is taken, and have necessary access to sufficient expertise to examine the environmental statement. Once a determination has been made, the Department shall publish the determination and make the reasoned conclusion, any conditions imposed, mitigation measures and the results of the consultation available to the public. Where the Department considers that the works are approved but objections have not been withdrawn, it must seek a determination from the Commission. The Commission will assess the environmental statement, and any further information available, and make a decision as to whether the works should be approved. The Department shall then publish this decision, any conditions attached to it, any mitigating measures, the results of the consultations and any monitoring measures.

13. Regulation 16 sets out how the Department or the Commission may impose monitoring conditions as part of their decision to approve the works and the nature of any such monitoring conditions. The Department must take steps to ensure that those conditions are implemented.

14. Regulation 17 describes the information to be provided to the public.

15. Regulations 18 amends the Water Order in order to apply the relevant Articles of the Drainage Order to canal schemes.

16. Regulations 19 and 20 provide for consequential amendments and revocations.

17. Schedule 1 sets out the criteria that must be considered when deciding if works are likely to have significant effects on the environment.

18. Schedule 2 sets out the information to be included in an environmental statement.

19. Schedule 3 sets out the environmental factors to be taken into account in the environmental statement.

20. Schedule 4 substitutes Schedule 5 to the Water Order which details the provisions of the Drainage Order applied for the purposes of environmental impact assessments of canal schemes and certain marina works and the modifications of those provisions for that purpose.

A Regulatory Impact Assessment has not been produced for these Regulations as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum has been produced and is available from Safe and Accessible Travel Division, Department for Infrastructure, Clarence Court, 10-18 Adelaide Street, Town Parks, Belfast BT2 8GB or online alongside this Regulation at <http://www.legislation.gov.uk/nisr>

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